

REMARKS

This responds to the Office Action mailed on November 5, 2007.

Claim 11 is amended, no claims are canceled, and no claims are added; as a result, claims 1-4, 8-15, 32-35, and 37-38 are now pending in this application.

Interview summary

Applicants would like to thank Examiner Ella Colbert for the courtesy of a phone interview on December 05, 2007 between the Examiner and Applicants' representative Ali Miresghhi. During the interview, the claims and the cited references were discussed and an agreement was reached that the Examiner would discuss the arguments in an allowance conference with another Primary Examiner. The Examiner on December 19, 2007 notified Applicants' representative that an extensive search would need to be performed once the Applicants submitted a response and if no new art is found to reject the claims, the application would go to allowance.

§103 Rejection of the Claims

Claims 1-4, 8, 12-13 and 32-33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Godin et al. (U.S. 5,890,138; hereinafter "Godin") in view of Amazon.com (<http://www.amazon.com/Carbohydrate-Addicts-Lifespan-Parogram-personalized/dp/0525941>, hereinafter "Amazon").

For the reasons that will be set forth below, Applicants respectfully submit that the identified claims are in fact non-obvious over Godin in view of Amazon, and are therefore allowable. Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.¹

¹ *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)

The Final Office Action has repeated the same rejections as applied in the previous Office Action. The Office Action has responded to the arguments presented in the previous Applicants' response, filed July 31, 2007. The Examiner responses to the Applicants' arguments were discussed during the course of the interview, and an agreement was reached that the claims of the instant application are not obvious over the combination of Godin and Amazon. Nonetheless, for the sake of completeness, the arguments presented in the Examiner Interview are briefly repeated here. 1) What Godin describes at col. 3, lines 15-48 are a stating price, a closing price, a minimum cost, and a product street cost. However, Godin does not disclose the claim 1 feature of *information pertaining a plurality of price choices*. 2) Amazon at pages 2-7 offers different price choices and ratings based on customer reviews. Amazon also presents topics such as "what customers ultimately buy after viewing this item," "spotlight reviews," "customer reviews," and "look for similar items by category." However, for each item, the above feedbacks are only generated at one price choice. When presenting other price choices for the same item (e.g., when the user clicks on "68 used & new available from \$0.01" to see other price choices), Amazon only presents "price + shipping", "condition", "seller information". As such, Amazon does not generate a feedback indication for the item at each of the price choices using supply and sales level information generated from the actions of other users, as required by claim 1. (Emphasis added throughout) Therefore, at least for the reasons set forth above and the arguments provided in the Applicants' previous response, filed July 31, 2007, claim 1 is not obvious in light of the combination of Godin and Amazon. Thus, Applicants respectfully submit that independent claim 1 and its dependent claims 2-4, 8, and 32-33 are allowable. As such, it is requested the claim rejections under 35 U.S.C. § 103(a) be withdrawn.

The same arguments as presented with respect to claim 1 are also applicable to a consideration of claim 11. As such, at least for the same reasons set forth above, claim 11 and its dependent claims 12-13 are not rendered obvious by the combination of Godin and Amazon. Thus, these claims are also allowable.

Claims 9-10 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Godin in view of Amazon and further in view Fisher et al. (U.S. 5,835,896, hereinafter Fisher).

Claims 9-10 and 14 are dependent on claims 1 and 11, respectively. Thus, they are deemed to include the same limitations discussed above with respect to claims 1 and 11. As such, at least for the same reason noted above, claims 9-10 and 14 are not rendered obvious by the combination of Godin and Amazon. Fisher is directed to a system and method for conducting a multi-person, interactive auction, without using a human auctioneer.² However, Fisher fails to disclose the features that were shown above to be missing from the combination of Godin and Amazon. Accordingly, Godin in view of Amazon and further in view Fisher does not render the claims obvious. Therefore, it is respectfully submitted that claims 9-10 and 14 are allowable.

Claims 11, 34-35 and 37-38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fisher in view of Amazon.

Claim 11 recites, in pertinent part, “the feedback indication area to be operative to display a feedback indication associated with the plurality of price choices pertaining to the selected item.” The Office Action, at page 6, admits that the above feature is not disclosed by Fisher and alleges that Amazon discloses the feature. As discussed above, and also was agreed upon during the course of the interview, Amazon does not disclose the feature of “*a feedback indication associated with the plurality of price choices.*” Thus, Applicants respectfully submit that, in light of the differences between claim 11 and the disclosures in Fisher and Amazon highlighted above, the references do not render claim 11 obvious. As such, claims 11 and its dependent claim 34 are allowable.

Claims 35 recites the limitations of “receiving from the user a request to alert the user when the item reaches a price choice selected by the user” and “communicating a reminder message to the user when the item reaches a price choice selected by the user.” With regard to these features, the Office Action has not discussed any passage from Fisher or Amazon. However, the Office Action at page 9 states “in an auction a user can request to be alerted when the item reaches a price selected by a user and communicate a reminder message to the user to purchase the item.” As Applicants’ representative indicated in the Examiner Interview, the Office Action’s assertion constitutes nothing more than an inadmissible hindsight, because the Office Action has failed to provide any prior art showing the feature, in support of the assertion.

² Fisher, Abstract

As such, it is respectfully submitted that claim 35 is allowable and it is requested the claim rejection under 35 U.S.C. § 103(a) over Fisher and Amazon be withdrawn.

Claim 37 recites the feature of “communicating a message to a user based on a price choice for the item reaching a threshold value associated with one of the plurality of price choices.” The Office Action has rejected claim 37 “for similar rationale as given for claim 35.” Therefore, at least for the reasons set forth above with respect to claim 35, independent claim 37 and its dependent claim 38 are allowable. Thus it is requested the claim rejections under 35 U.S.C. § 103(a) over Fisher and Amazon be withdrawn.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' representative at 408-278-4053 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date January 08, 2008

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 8 day of January 2008.

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